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EXAMINER

AUGUSTIN, EVENS J

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/855,317
Filing Date: May 15, 2001
Appellant(s): MARJADI ET AL.

William M. Hanlon Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 10/17/2007 appealing from the Office action mailed 05/18/2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5745879	Wyman	9-1995
5671412	Christiano	7-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christiano (U.S 5,671,412), in view of Wyman (U.S 5,745,879).
3. As per claims 1-12, Christiano discloses a license management system for software applications. The system can do the following:
 - A. Provide licensed units to users (column (C) 3, line (L) 46) ("providing licensed units to a customer").
 - B. Client request for a component license for a component product in a package (C 4, L 15-17) – Client requesting for a designated/selected software product (C 4, L 35-36) ("providing independently selectable digital content ").
 - C. Assign a minimum/predetermined amount of units that a particular digital content requires to be used (C 17, L 36-38) ("assigning a predetermined number of customer computer network assigned units to each independently selected digital content when the digital content is run on the customer computer network").
 - D. Assign check out units based on the number of units being used by requester (column 19, line 67, column 20, lines 1-2)

- E. A license is granted when the requested units **plus** the checked out units are less than or equal to the total licensed units (column 29, lines 4-9, column 20 lines 1-3). A license is denied if the logic is false (figure 9, item 174).
 - F. Each software program requires a minimum amount of units, in order for that particular program to be checked out (column 29, lines 20-24). The requested units for a particular program have to be greater than or equal to the minimum amount of units for that particular application (column 19, lines 40-45)
 - G. When the requested amounts of units are being used, the available total licensed units are reduced by the requested units (column 29, lines 35-38). Therefore, the units are charged against the total available units during execution of the requested software.
4. However, Christiano did not explicitly describe a system in which the licensed units can be distributed between a server and the user computer/network. The USPTO is introducing/interpreting the aspect of Application Service Provider (ASP), as a server hosting applications for end users. Accordingly Wyman teaches an invention that relates to methods of operation of computer systems, and more particularly to a method and system for managing the licensing of software executed on computer systems. According to Wyman the invention includes:
- A. Units granted in the product use authorization may be delegated to another server (column 7, lines 11-12)
 - B. Units are deducted from an available pool when a user node makes a valid request (column 6, lines 48-49) - In a delegatee server 13, the units field 41 will have some subset of the units field in the original product use authorization. As units are granted to users 16 or delegated to server, the remaining units available for grant are indicated in a subfield 42 in the copy of the document used by the server (column 11, lines 17-22) - Paying/charging for

check out units (C 14, L 40-41) ("charging a number of checked out units to the customer computer network based on the digital content currently being run by the customer on the customer computer network and on the application service provider ").

- C. Programs being executed on delegated servers (ASP) and user computer and units delegated to server and user computer (C 8, L 35-45) ("selecting through the customer computer network one of the customer computer network and the application service provider for execution of a selected digital content").
- D. The invention determines whether or not the available units is zero or too small to permit the requested use (column 35-37) ("determining a number of available units equal to the difference between the total licensed units to the customer computer network and the total checked out units charged to the customer computer network for digital content currently being executed on the customer computer network and on the application service provider for the customer")
- E. If determination is false, the user can make the proper provision or the application can itself be structured to shut itself down if not authorized to run, or it can be structured to shut down certain functions (e.g., ability to save files, ability to print, etc.) (column 12, lines 55-57) ("determining whether a requested digital content is to be executed or denied execution on the selected one of the customer computer network and the application service provider based on the difference between the available units on the customer computer network requesting execution of the digital content and the assigned units of the selected digital content on the selected customer computer network and the application service provider")

F. Number of units available for future use declines upon every use of the licensed software product (column 14, lines 29-30)

5. Therefore, it would have been obvious for one skilled in the art of digital content distribution and delivery over an open network to combine Christiano's invention, which deals with a license management system for software applications, with Wyman's invention concerning methods of operation of computer systems, and more particularly to a method and system for managing the licensing of software executed on computer systems. It would have been obvious because (motivation) according to Wyman, the delegation of units allows an administrator to distribute units to improve response time and increase the resilience of the system (column 11, lines 46-48), and may be used as a method of allocating licensed units within a budget for administrative purposes (column 11, lines 54-55).

(10) Response to Argument

Argument #1: No Suggestion or combination to combine Christiano and Wyman and that Christiano fails to explicitly describe a system in which licensed units are distributed between a server and user/computer

Response #1: With regard to the notion of a server, since it is not lexicographically defined, the USPTO interprets in accordance to Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997¹. Accordingly, a server is defined as a computer running administrative software that controls access to the network and its resources, such as printers and disk drives, and provides resources to computers functioning as workstations on the network

¹ Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" to define the term "flag." See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled 'New Terminology.'

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or a computer or program that responds to commands from a client (Note: this interpretation was communicated to the appellant on the last office action mailed on 05/18/2007 – Par. 4, item G).

With regard to the aspect that Christiano does not teach a system in which licensed units are distribute between server and user/computer, Figure 1 in Christiano clearly shows that licenses are distributed to a plurality of clients interconnected on a network (C6, L8-10). Therefore, Christiano does not exclude the aspect of licenses being distributed to multiple computers/clients and that one of the computers involved would not or could not be one that responds to commands from a client/computer (i.e., server). Furthermore, Christiano teaches a system that provides a predetermined number of licenses for computer systems (emphasis on plurality) on the network (C10, L42). Implicitly, one skilled in the art at the time of applicant's invention would deduce from Christiano's invention that one of the computer systems could be a server and another client. Therefore, it would have been obvious for one skilled in the art of digital content distribution and delivery over an open network to combine Christiano's invention, which deals with a license management system for software applications, with Wyman's invention concerning methods of operation of computer systems, and more particularly to a method and system for managing the licensing of software executed on computer systems. It would have been obvious because (motivation) according to Wyman, the distribution of units to clients and servers improves response time and increase the resilience of the system (column 11, lines 46-48), and may be used as a method of allocating licensed units for administrative and budget/costs purposes (column 11, lines 54-55).

Argument #2: Combination of Christiano and Wyman do not teach or suggest claim limitation

Response #2: Examiner respectfully disagree with this notion for the following reasons:

With regard to the limitations:

1. ("providing licensed units to a customer") – Christiano teaches licensed units are able to be requested and checked by users (equivalent to license server providing units to users) (column 3, line 20-46).

2. ("providing independently selectable digital content") --Christiano teaches Users can request and receive (provided by the software owner) components of software (digital content) can request licensing suite (column 4, lines 15-17, column 8, lines 20-29). Since different component can be requested, the specific component (s) have to be selected before being requested.
3. ("assigning a predetermined number of customer computer network assigned units to each independently selected digital content when the digital content is run on the customer computer network") – Christiano teaches Assigning a minimum number (equivalent to predetermined number) of license units to be used to be used by a computer (column 17, lines 35-44). The client computer is part of a network (column 4, lines 35-40).
4. ("assigning a predetermined number of application service provider assigned units to each independently selected digital content when the digital content is run on the application service provider") –Christiano teaches assigning a minimum number (equivalent to predetermined number) of license units to be used to be used by a computer (column 17, lines 35-44). The client computers are part of a network (column 4, lines 35-40). Furthermore, Wyman teaches that programs are being executed on delegated servers (ASP) and user computer and units delegated to server and user computer (C 8, L 35-45). Units are deducted from an available pool when a user node makes a valid request (column 6, lines 48-49) - In a delegatee server 13, the units field 41 will have some subset of the units field in the original product use authorization. As units are granted to users 16 or delegated to server, the remaining units available for grant are indicated in a subfield 42 in the copy of the document used by the server (column 11, lines 17-22).
5. ("charging a number of checked out units to the customer computer network based on the digital content currently being run by the customer on the customer computer network and on the application service

provider;") – Christiano teaches that check out units is based on the number of units being used (run) by requester (column 19, line 67, column 20, lines 1-2). Wyman also teaches that units are deducted/Charged from an available pool when a user node makes a valid request (column 6, lines 48-49) - In a delegatee server 13, the units field 41 will have some subset of the units field in the original product use authorization. As units are granted to users 16 or delegated to server, the remaining units available for grant are indicated in a subfield 42 in the copy of the document used by the server (column 11, lines 17-22).

6. ("selecting through the customer computer network one of the customer computer network and the application service provider for execution of a selected digital content") – Christiano teaches a finder mechanism used for locating a computer network used for implementing or executing the software licensing system (column 23, lines 25-39, column 4, lines 58-61) - This is equivalent to selecting the network to run the application because the mechanism has to locate a particular network (from other networks). Wyman also teaches that programs being executed on delegated servers (ASP) and user computer and units delegated to server and user computer (C 8, L 35-45).
7. ("determining a number of available units equal to the difference between the total licensed units to the customer computer network and the total checked out units charged to the customer computer network for digital content currently being executed on the customer computer network and on the application service provider for the customer") – Christiano teaches that available units is determined when the requested units plus the checked out units are less than or equal to the total licensed units (column 20 lines 1-12). A license is denied if the logic if false (figure 9, item 174). Wyman also teaches that it determines whether or not the available units is zero or too small to permit the requested use (column 35-37).

("determining whether a requested digital content is to be executed or denied execution on at-least-the selected one of the customer computer network and the application service provider based on the difference between the available units on the customer computer network requesting execution of the digital content and the assigned units of the selected digital content on the selected customer computer network and the application service provider") -- Christiano teaches that a license is granted (available units) is determined when the requested units plus the checked out units are less than or equal to the total licensed units (column 20 lines 1-12). A license is denied if the logic if false (figure 9, item 174). Additionally, Wyman teaches that if determination is false, the user can make the proper provision or the application can itself be structured to shut itself down if not authorized to run, or it can be structured to shut down certain functions (e.g., ability to save files, ability to print, etc.) (column 12, lines 55-57) --Number of units available for future use declines upon every use of the licensed software product (column 14, lines 29-30).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Evens J. Augustin
Examiner, Art Unit 3621
January 18, 2008

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